

Panaji, 3rd June, 2004 (Jyaistha 13, 1926)

SERIES II No. 10

OFFICIAL GAZETTE



GOVERNMENT OF GOA

SUPPLEMENT

GOVERNMENT OF GOA

Department of Labour

Notification

No. 28/1/2003-LAB/1017

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 21-2-2003 in reference No. IT/7/2002, is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 24th March, 2003.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/7/2002

Shri Melvin D'Costa,
H. No. 200,
Madel-Grande,
Margao-Goa.

... Workman/Party I

V/s

M/s. Renaissance Goa Resort,
Fatrade, Varca Goa.

... Employer/Party II

Workman/Party I - Represented by Shri P. Gaonkar.

Employer/Party II - Represented by Adv. Shri M. S. Bandodkar.

Dated: 21-2-2003.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 8-2-2002 bearing No. 28/21/2001-LAB referred the following dispute for adjudication by this Tribunal.

- Whether the action of the management of M/s. Renaissance Goa Resort, Fatrade, Varca-Goa, in terminating the services of Shri Melvin D'Costa, Electrician, with effect from 17-6-01 is legal and justified ?
- If not, to what relief the workman is entitled ?

2. On receipt of the reference a case was registered under No. IT/7/2002 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman/Party-I (for short "workman") filed its statement of claim at Exb. 4. The facts of the case in brief as pleaded by the workman are that he was working with the employer/Party-II (for short, "employer") as an Electrician with effect from 20-8-1999. That at the time of his appointment he was informed that the post of Electrician is permanent and that he will be confirmed in service. That in the month of June, 2001 he requested for confirmation of his service but the employer terminated his services orally by not allowing him to resume his duties w.e.f. 17-6-2001. That before terminating his services he was not issued any memo or chargesheet nor any enquiry was conducted against him. That after termination by letter dated 20-6-2001 he made a demand against the management for reinstating him in service and since the employer did not agree to demand he raised an industrial dispute before the Dy. Labour Commissioner, Margao. That the conciliation proceedings ended in failure because of the adamant attitude taken by the management. The workman stated that termination of his services by the employer is in violation of the provisions of Chapter V-B of the Industrial Disputes Act, 1947 as well as Section 25-F of the said Act and therefore

the termination is illegal and unjustified. The workman claimed that he is entitled to reinstatement in service with full back wages and other consequential benefits.

3. The employer filed written statement at Exb. 6 denying the claim of the workman. The employer stated that the reference made by the Government is not maintainable for the reasons stated in para (A) and (B) of the written statement. The employer stated that the workman was appointed purely on contractual employment for a period from 20-8-99 to 19-1-2000 as per the letter dated 26-8-99 and his contract was renewed upto 15-6-2000 because of the exigency of work. The employer stated that the contract of the workman was not renewed from 16-6-2000 because there was no work for the employer. The employer stated that the services of the workman were again engaged on contractual employment for a specific period from 1-9-2000 to 28-2-2001 and subsequently it was extended upto 17-6-2001 and after 17-6-2001 the said contract was not renewed because there was no work for the Electrician. The employer denied that the post of Electrician is of permanent nature or that the work of Electrician is being carried out by the employer by engaging new workman for the said post. The employer stated that the provisions of Section 25-F or the provisions of Chapter V B of the Industrial Disputes Act, 1947 are not applicable to the workman and therefore the question of violating said provisions of the Industrial Disputes Act did not arise. The employer denied that the workman is entitled to any relief as claimed by him. The workman thereafter filed rejoinder at Exb. 7.

4. On the pleadings of the parties issues were framed at Exb. 8 and thereafter the case was fixed for recording the evidence of the workman. At this stage the parties submitted that they are trying to arrive at an amicable settlement and at the request of the parties the case was fixed on 3-2-2003 for filing the terms of settlement by the parties. Accordingly on 3-2-2003 the parties appeared and they filed the terms of the settlement dated 3-2-2003 at Exb. 10. The parties also prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement dated 3-2-2003 which are duly signed by the parties. I am satisfied that the said terms are certainly in the interest of the workman. I therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 3-2-2003 Exb. 10.

ORDER

1. It is agreed between the parties that the management of the Renaissance Goa Resort, Varca, Salcete, Goa shall pay a sum of Rs. 15,000/- (Rupees fifteen thousand only) to Mr. Melvin D'Costa, in full and final settlement of all his claims arising out of his employment/termination and arising out of the reference mentioned herein above.
2. Mr. Melvin D'Costa shall accept the said amount of Rs. 15,000/- stated in clause No. 1 above, in full

and final settlement of all his claims arising out of his employment with M/s. Renaissance Goa Resort and reference mentioned hereinabove and further confirms that nothing further is due and payable to him by the hotel/establishment which can be computed in terms of money, and this settlement satisfy all his claims of reference including his any claim of reinstatement and/or re-employment.

3. The management shall pay the said sum of Rs. 15,000/- by way of cheque No. 0757659 dated 27-01-2003 drawn on Bank of Baroda, Margao Branch, and Mr. Melvin D'Costa shall acknowledge the said amount by way of receipt.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2003-LAB/1016

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 24-2-2003 in reference No. IT/16/94, is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.
V. R. Ghaisas, Under Secretary (Labour).

Panaji, 24th March, 2003.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/16/94

Workmen rep. by the
General Secretary,
Gomantak Mazdoor Sangh,
Kamakshi Krupa, Ground Floor,
Khadapa Band,
Ponda-Goa.

... Workman/Party I

V/s

M/s. Precision Casting
and Fabricating Co.,
D2-6, Mapusa Industrial Estate,
Mapusa-Goa.

... Employer/Party II

Workmen/Party I - Represented by Shri P. Gaonkar

Employer/Party II - Represented by Adv. Shri E. Dias.

Dated: 24-2-2003.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 24-8-93 bearing No. 28/35/93-LAB referred the following dispute for adjudication by this Tribunal.

Whether the following demands raised by Gomantak Mazdoor Sangh before the management of M/s. Precision, Casting and Fabricating Co. are legal and justified ?

DEMANDS

Demand No. 1: Scale of Pay: presently there is no proper scale of pay and hence Union demands that following pay scales should be implemented.
Unskilled: 500-30-650-35-825-40-1025
Semi skilled: 650-35-825-40-1025-45-1250
Skilled: 750-40-950-45-1200-50-1450-55-2000.

Demand No. 2: Variable Dearness Allowances: Union demands that due to the heavy increase in the rates of the essential commodities, it is very difficult to maintain the expenditure of the family and hence only to mitigate the said increase to some extent, the union demands that V.D.A. should be paid at the rate of Rs. 1.65 per point (1960-100) above 950 points.

Demand No. 3: House Rent Allowance: Union demands that all the workers should be paid House Rent Allowance at the rate of 10% of the basic salary.

Demand No. 4: Uniform and Washing Allowances: Considering the nature of work, union demands that three sets of uniforms be supplied to each workman every year and Washing Allowance at the rate of Rs. 35/- per month be paid every month to each workman to mitigate the cost of washing.

Demand No. 5: Leave: Union states that present quantum of leave is very less and hence demand that the leave shall be granted at following rates.

Casual Leave: 15 days per year.

Sick Leave: 15 days per year.

Earned Leave: 30 days per year.

Demand No. 6: Transport Allowance: Union demands that all the workmen should be paid Transport Allowance at the rate of Rs. 100/- per month considering the high cost of transportation.

Demand No. 7: Bonus/Ex-Gratia: Union demands that during the currency of this settlement, all the workmen should be paid 20% Bonus.

Demand No. 8: Canteen Subsidy: Union demands that canteen subsidy should be paid at the rate of Rs. 52/- per month per workman. Union reserves the right to amend, delete, add any clause to the charter of demand during the discussion.

If not, to what relief the workmen are entitled ?

2. On receipt of the reference a case was registered under No. IT/16/94 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workmen/Party-I (for short "Union") filed its statement of claim in support of the demands raised by it against the employer/Party-II (for short, "employer"). The union stated that the demands raised by it are legal and justified and the employer is in financial position to meet the demands raised by the Union on behalf of the workers. The employer filed written statement at Exb. 5 denying that the demands raised by the Union are legal and justified. The employer resisted the claim of the union on various grounds mentioned in the written statement. The employer also challenged the authority of the union to represent the workmen in the present reference and also stated that it is not an industrial establishment as defined under the Industrial Disputes Act, 1947 and therefore the reference is not maintainable. The employer stated that the workers are not entitled to any relief as claimed by them and the reference is liable to be rejected.

3. On the pleadings of the parties issues were framed and thereafter the case was fixed for recording the evidence of the Union. Accordingly the evidence of the union was partly recorded. At this stage the parties submitted that they are trying to arrive at an amicable settlement and at the request of both the parties the case was fixed on 3-2-2003 for filing the terms of settlement. Accordingly on this date the parties appeared and they filed an application dated 31-1-2003 at Exb. 21. In the said application the parties stated that the dispute of the workers in reference case No. IT/17/94 which was pending before this Tribunal for adjudication has been settled as per the terms of the settlement dated 31-1-2003 and that in view of the said settlement there is no dispute between the parties in the present case. The parties prayed that since the dispute does not exist no dispute award be passed in the present reference. The parties annexed to the application a true copy of the terms of the settlement dated 31-1-2003 arrived at between the parties in reference case No. IT/17/94. Since according to the parties they have resolved the dispute in the present reference and as such no dispute is existing between them as regards the Charter of Demands which is the subject matter of the present reference, the

reference does not survive. In the circumstances I pass the following order.

ORDER

It is hereby held that the reference made by the Government does not survive as the dispute between the parties does not exist.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2003-LAB/1018

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 3-2-2003 in reference No. IT/40/90, is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 24th March, 2003.

IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/40/90

Smt. Marianinha Rebello,
Madel, Pequeno,
Margao, Salcete-Goa. ... Workman/Party I
V/s

Dr. Camilo da Silva,
Dentist, Station Road,
Margao,
Salcete-Goa. ... Employer/Party II

Workman/Party I - Represented by Adv. Shri G. B. Kamat.

Employer/Party II - Represented by Shri K. V. Nadkarni.

Dated: 3-2-2003.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 28th September, 1990 bearing No. 28/45/90-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the employer Dr. Camilo da Silva in terminating the services of Smt. Marianinha Rebello, Dental Technician, with effect from 27-12-1989 is legal and justified ?

It not, to what relief the workman is entitled ?"

2. On receipt of the reference a case was registered under No. IT/40/90 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman-Party I (for short, "workman") filed his statement of claim at Exb. 5. The facts of the case in brief as pleaded by the workman are she was working with the employer-Party-II (for short, "employer") as a Dental Technician since the year 1969 and she was in continuous service immediately prior to termination of her service orally on 7-1-87. That her last drawn salary was Rs. 550/- p.m. That throughout the period of her employment she worked honestly, diligently and sincerely. That no reasons were given by the employer for terminating her services nor he complied with the provisions of Sec. 25F of the Industrial Disputes Act, 1947. The workman contended that termination of her service by the employer is illegal and unjustified, the same being in contravention of provisions of Sec. 25F of the Industrial Disputes Act, 1947. The workman claimed that she is entitled to reinstatement in service with full back wages.

3. The employer filed written statement at Exb. 10. By way preliminary objections the employer stated that the reference is not maintainable because the employer is not an industry within the meaning of Sec. 2(j) of the Industrial Disputes Act, 1947 and the dispute referred is an industrial dispute as defined under Sec. 2(k) of the Industrial Disputes Act, 1947. The employer stated that the Government has failed to apply its mind before making the reference and the conciliation officer before recommending the present dispute to the Government ignored the pleadings made by the employer in the conciliation proceedings. The employer stated that he is carrying on the profession of a dentist by himself. He stated that the workman was working as a house maid with his colleague Dr. Luis Miranda, a dentist who expired and when she was working with said Dr. Luis Miranda he used to take her help in the work of repairing dentures though she was not qualified for the said job. That the employer stated that after the death of Dr. Luis Miranda on the grounds of mercy he engaged the services of the workman on part time basis and as and when he had the orders for preparing the dentures. The employer denied that there was any employer-employee relationship between him and the workman. The employer stated that he had noticed that the workman was bringing her son to her dental clinic in his absence and used to train him on making dentures which was objected by him. Thereupon the workman informed him that she would like to discontinue from coming to work and that she could easily get a job outside and at her request he issued a certificate to enable her to secure a job. The employer stated that the workman is now trying

to misuse the said certificate for her own gains. The employer denied that the workman was employed from 1969 or that her services were terminated or that she was working as a dental technician on salary of Rs. 550/- p.m. The employer stated that since there was no employer-employee relationship and her services were not terminated the question of complying with the provisions of Sec. 25F of the Industrial Disputes Act, did not arise. The employer denied that the workman is entitled to any relief as claimed by her.

4. On the pleadings of the parties issues were framed at Exb. 11 and subsequently with the consent of the parties by order dated 18-2-2002 the issue No. 1 which was framed earlier was deleted and in its place a fresh issue was framed and also issue No. 1A was framed as additional issue. Thus the issues which stood framed in the present case are as follows:

1. Whether the Party II proves that it is not an industry within the meaning of Sec. 2(j) of the Industrial Disputes Act, 1947 ?
- 1A. Whether the Party II proves that the dispute referred is not an industrial dispute as defined under Sec. 2(k) of the Industrial Disputes Act, 1947 ?
2. If not does Party I prove that she was serving as dental technician and her last pay was Rs. 550/- p.m. ?
3. If yes, does Party I prove that she was illegally terminated from service by Party II ?
4. If yes, whether Party I is entitled to any relief ?
5. What Award or Order ?

5. My findings on the issues are as follows:

Issue No. 1 : In the negative.

Issue No. 1A : In the negative.

Issue No. 2 : In the affirmative as regards serving as dental technician. In the negative as regards her last pay of Rs. 550/- p.m.

Issue No. 3 : In the negative.

Issue No. 4 : Workman/Party I is not entitled to any relief.

Issue No. 5 : As per order below.

REASONS

6. Issue No. 1 and 1A: These issues were framed because in the written statement the defence was taken that the employer is not an industry as defined under Sec. 2(J) of the Industrial Disputes Act 1947 and the dispute referred is not an industrial dispute as defined under Sec. 2(K) of the said Act. However, in the course of arguments Shri K.V. Nadkarni, representing the employer submitted that he is not pressing for the said issues and as such the said issues may be answered against the employer. He also filed an application mentioning that the employer is not pressing for the

said issues. The burden was on the employer to prove that the employer is not an industry and that the dispute referred is not an industrial dispute. Since the employer has not pressed for the above issues, I hold that the employer has failed to prove that the employer is not an industry and that the dispute referred is an industry dispute as defined under the Act. I therefore answer the issue Nos. 1 and 1A in the negative.

7. Issue No. 2: The contention of the workman is that she was employed with the employer in his dental clinic as a dental technician on salary of Rs. 550/- per month whereas the contention of the employer is that she was employed as a maid servant. The workman has examined herself in support of her case whereas the employer has examined himself. The workman stated in her deposition that she was employed with the employer since the year 1969 as a Dental Technician and her duties were to take out impression of dentures, prepare the dentures, do the work of filling the dentures and such ancillary work and that she was doing the said work under the supervision of the employer. She stated that her last drawn salary was Rs. 550/- p.m. She produced the certificate dated nil issued to her by the employer. In her cross examination she stated that prior to her employment with the employer she was employed with Dr. Luis Miranda who was a Dentist. She denied that she was employed as a maid servant by Dr. Luis Miranda. In her cross examination the employer admitted the issuing of the certificate Exb. W-1 to the workman and stated that it was issued to enable her to secure a job some where else. The employer in his deposition also has admitted the issuing of the certificate Exb. W-1 by him to the workman. The employer has not led any evidence to show that the workman was employed as a maid servant to do the cleaning work. In the certificate Exb. W-1 produced by the workman the employer has admitted that the workman was working in his dental clinic as a Dental Technician for several years. This certificate is signed by the employer and it is admitted by him. Therefore in the absence of any contrary evidence the certificate, the certificate issued by the employer is liable to be accepted and believed and much so when it is issued by the employer himself. Besides in para. 4 of the written statement the employer has admitted that he used to employ the services of the workman as and when he used to get the orders for preparing dentures. I, therefore hold that the workman has succeeded in proving that she was employed with the employer as a Dental Technician. The workman in her deposition has stated that her last drawn wages were Rs. 550/- p.m. No evidence whatsoever either documentary or otherwise has been produced by the workman in support of her above contention. In her cross examination she admitted that she has no documentary evidence to show that her last drawn salary was Rs. 550/- p.m. In the absence of any evidence from the workman, her statement that her last drawn salary was Rs. 550/- p.m. cannot be accepted. In the circumstances I hold that the workman has succeeded in proving that she was employed with the employer as a Dental Technician but she has failed to prove that her

last drawn salary was Rs. 550/- p.m. I, therefore answer the issue No. 2 accordingly.

8. *Issue No. 3:* Adv. Shri G. B. Kamat, representing the workman submitted that the services of the workman were terminated by the employer on 27-12-89 when she reported for duties. He submitted that the workman in her deposition has stated that she had gone on leave for 8 days prior to 27-12-89 and when reported on 27-12-89 she found that another lady was already working there. He stated that the certificate Exb. W-1 was obtained by the workman from the employer about 8 days after termination of her service but she did not know what was written in the said certificate as she does not know to read and write English. He submitted that the reasons given in the certificate are contrary to the reasons given for leaving the job in para. 5 of the written statement. He relied upon the judgment of the Privy Council in the case of *Siddik Mahomed Shah v/s Mt. Saran and others* reported in AIR 1930 Privy Council 57CD in support of his contention that if there are no pleadings evidence cannot be looked into. He submitted that the contents of the certificate to the extent of mentioning that the workman had left the job are false. He submitted that the termination of service amounts to retrenchment and since the employer did not comply with the provisions of Sec. 25F of the Industrial Disputes Act 1947 the termination is illegal and unjustified.

9. Shri K. V. Nadkarni, representing the employer submitted on the other hand that the employer did not terminate the services of the workman but it is the workman who stopped coming for work and at her instance certificate Exb. W-1 was issued to her in order to enable her to secure a job else where. He submitted that the workman had admitted in her evidence that she had not made any complaint regarding termination of her service. He submitted that the certificate produced by the workman at Exb. W-1 itself proves that her services were not terminated but she of her own left the services for better prospects. He submitted in the circumstances it is not a case of termination or retrenchment but it is a case of resignation and therefore the question of complying with the provisions of Sec. 25F of the Act did not arise. In support of his this contention he relied upon the judgment of the Bombay High Court in the case of *Oyster Marine Inc. V/s Chandrakant R. Ugale* reported in 2001 III CLR 873.

10. Since the employer had denied that the services of the workman were terminated, the burden was on the workman to prove that the employer terminated her services illegally and without justification. The workman as well as the employer have examined only themselves. The question is whether the services of the workman were terminated or she voluntarily left service. The workman in her deposition stated that prior to 27-12-89 she had applied for 8 days leave and that the said leave was granted to her. She stated that when she resumed duties on 27-12-89 the employer told her not to report for work and that at that time she found another lady working in her place. In her cross examination she stated

that she had not applied for leave in writing. No Suggestion whatsoever was put to the employer by the workman that she was on leave for 8 days prior to 27-12-89. Also no suggestion was put to the employer that when she had gone on leave he had employed one lady in her place. The suggestion which was put was that after termination of her services the employer employed another technician which suggestion was denied by the employer. There is no evidence from the workman to prove that she had gone on leave for 8 days prior to 27-12-89 and that when she resumed duties she found another lady working in her place. There is also no evidence from the workman that on 27-12-89 she was told by the employer not to report for duties. However, the workman herself has produced a certificate dated nil at Exb. W-1. The certificate admittedly was issued to her by the employer. In this certificate it is mentioned that the workman left her job as he was leaving India shortly to join his children in America. The workman in her deposition stated that she had demanded the certificate from the employer. However, she did not state the reasons for demanding such a certificate. If according to the workman her services were terminated by the employer where was the question of demanding any certificate from the employer. She had stated that the certificate was issued to her 8 days after termination of her service. It is difficult to believe that a certificate would have been issued by the employer at the request of the workman if he had really terminated her services. The workman has stated in her deposition that she did not know to read and write English and therefore she did not know the contents of the same. In her cross examination she stated that even today she does not know the contents of the certificate Exb. W-1. The certificate is produced by the workman herself. It is therefore difficult to believe that even today the workman does not know the contents of the certificate and that she has produced the said certificate without knowing the contents of the same. It is however true that in para 5 of the written statement the reasons given for leaving the services by the workman are different from the one mentioned in the certificate. Adv. Shri G. B. Kamat has relied upon the judgment of the Privy Council in the case of *Siddik Mohamed Shah (supra)*. In that case the Privy Council has held that no evidence can be looked into upon a plea which was never put forward. In my view these principles cannot be applied in the present case because in the instant case the employer has taken the plea in the written statement that the services of the workman are not terminated and that she has voluntarily left the services. This is stated so by the employer in his evidence also and also it is mentioned in the certificate. The only fact is that the reasons given for leaving the services are different in the written statement, in the evidence and in the certificate. However the employer has stated that in the written statement and in the evidence that the workman left the services for getting a better job. Therefore the Judgment of the Privy Council in the case of *Siddik Mohamed Shah (supra)* cannot be strictly applied to the present case.

11. The workman was aware much before raising the dispute that the employer had issued a certificate to her, which is Exb. W-1. In the written statement at para. 5 the employer had pleaded that the workman had stated that She would like to discontinue coming for work and that she could easily get a job outside if the employer issued to her a service certificate and that accordingly the employer issued a certificate to enable the workman to secure a job outside. In para 10 of the written statement the employer reiterated that the workman had expressed desire to relieve her and asked for certificate which was issued to enable her to secure a good job elsewhere. The workman could have denied the above facts and challenged the certificate by filing her rejoinder. The workman could have stated that she did not know the contents of the certificate because she did not know to read and write English. But the workman did not file any rejoinder challenging the above facts mentioned in the written statement nor the certificate issued by the employer. The workman stated that she did not know the contents of the certificate for the first time in the course of her deposition, which is very difficult to be believed in the circumstances stated above. If the services of the workman were terminated, she would have definitely made a complaint to the employer. She admitted in her cross examination that she did not write any letter to the employer complaining about termination of her service. Shri K.V. Nadkarni, representing the employer has relied upon the judgment of the Bombay High Court in the case of Oyster Marine Inc. (supra). In this case there was no termination order but the contention of the worker was that his services were orally terminated by the management. The contention of the company/Petitioner was that the worker/respondent had resigned from service and on his resignation his dues were paid alongwith the service certificate. The High Court held that if it was a case of retrenchment and not of resignation oral or written, then it cannot be conceived that any employer could issue and any employee would demand service certificate. The High Court held that it was established from the records that the worker left the services for better prospects for which he had obtained the service certificate from the company/petitioner. In my view this judgment of the Bombay High Court squarely applies to the present case. In this case also there is no written termination order. The contention of the workman is that her services were terminated orally. The employer in his evidence has stated that the workman left the job of her own and he paid to her salary for the month of December, 1989 and gave the certificate in good faith. If the services of the workman were terminated as contented by her it is difficult to believe that the workman would demand the issuing of service certificate to her and the employer would issue the same and that too 8 days after the alleged termination of service. In the absence of any evidence from the workman that her services were terminated, the certificate issued by the employer Exb. W-1 is liable to be believed and accepted. In my view the evidence on record which is discussed above establishes that the workman left the services of her

own and she obtained the certificate from the employer for securing another job. Since the workman had left the services of her own and her services were not terminated by the employer, the provisions of Sec. 2(00) of the Industrial Disputes Act, 1947 did not apply and the question of complying with the provisions of Sec. 25F of the said Act did not arise. In the circumstances I hold that the workman has failed to prove that her services were illegally terminated by the employer from 27-12-89. I therefore answer the issue No. 3 in the negative. The workman had contended that after termination of her service the employer had employed new employee in her place. However, the workman has not produced any evidence to prove this fact.

12. Issue No. 4: It has been held by me that the workman has failed to prove that her services were illegally terminated by the employer with effect from 27-12-89. It has been held by me that the workman had left the services of the employer of her own and she had obtained the service certificate Exb. W-1 from the employer for securing another job. This being the case the workman is not entitled to any relief. In the circumstances I hold that the workman is not entitled to any relief. I, therefore answer the issue No. 4 accordingly.

Hence I pass the following order.

ORDER

It is hereby held that there is no termination of the services of Smt. Marianinha Rebello, Dental Technician by the employer Dr. Cailo da Silva w.e.f. 27-12-89 but she left the services of her own. It is hereby further held that Smt. Marianinha Rebello is not entitled to any relief.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2003-LAB/1240

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 25-3-2003 in reference No. IT/72/99, is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 7th May, 2003.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/72/99

Shri Lawrence Sequeira,
Tivai Waddo,
Calangute,
Bardez-Goa.

... Workman/Party I

V/s

M/s. Hotel Goan Heritage,
Gaura Vaddo,
Calangute,
Bardez-Goa.

... Employer/Party II

Party I/Workman - Present in person.

Party II/Employer - Represented by Adv. P. J. Kamat.

Dated: 25-3-2003.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 15th April, 1999 bearing No. IRM/CON/MAP/(98)/3055 referred the following dispute for adjudication by this Tribunal.

- "(1) Whether the action of the management of M/s. Hotel Goan Heritage, Calangute, Bardez-Goa, in terminating the services of Shri Lawrence Sequeira, Pantry Cook, with effect from 30-10-1998, is legal and justified ?
- (2) It not, to what relief the workman is entitled ?"

2. On receipt of the reference a case was registered under No. IT/72/99 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workman/Party I (for short, "Workman") filed his statement of claim at Exb. 4. The facts of the case as pleaded by the workman are that he was employed as a Pantry Cook since 27th October, 1989 and his services were confirmed on completion of 2½ years of service. That on or about 3rd April, 1997 he was issued with a charge sheet dated 3-4-97 alleging certain acts of misconduct against him. That he replied to the said charge sheet by letter dated 14-3-77 denying the charges made against him. Thereafter the Employer-Party II (for short, "Employer") appointed Mr. Rohit Lobo as Inquiry Officer to conduct enquiry against him. Thereafter the enquiry was conducted and the Inquiry Officer submitted his findings dated 6-6-98 to the management holding him guilty of the charges. On respect of the findings the employer issued to him a show cause notice dated 29th July, 1998 asking him to show cause why he should not be dismissed from service and without waiting for the reply

from him, the employer dismissed him from service by letter dated 3rd October, 1998 with immediate effect. The workman contended that termination of his service by the employer w.e.f. 3-10-98 is illegal and unjustified and that he is entitled to reinstatement in service with full back wages.

3. The employer filed written statement at Exb. 6. The employer admitted that the workman was employed as a Pantry cook from 27-10-89 and that subsequently he was confirmed in service. The employer admitted that the workman issued a charge sheet dated 3rd April, 1997 for having committed certain acts of misconducts and that the workman replied to the said charge sheet by letter dated 14-4-97 denying the charges made against him. The employer admitted that Mr. Rohit Lobo was appointed as Inquiry Officer to inquire into the charge sheet issued to the workman. The employer stated that the Inquiry Officer after conducting the enquiry submitted his findings dated 6-6-98 holding the workman guilty of the charges of misconduct. The employer denied that the enquiry was conducted in violation of principles of natural justice or that the findings given by the Inquiry Officer are perverse. The employer denied that the order of dismissal passed against the workman is illegal or unjustified or that the workman is entitled to any relief as claimed by him. The workman thereafter filed rejoinder at Exb. 7.

4. On the pleadings of the parties issues were framed at Exb. 8 and thereafter the case was fixed for recording the evidence of the workman on preliminary issues. After the evidence of the workman was recorded the case was fixed for recording the evidence of the employer. Before the evidence of the employer was recorded the parties submitted that they are trying to arrive at a amicable settlement and accordingly at the request of the parties the case was fixed for filing of the terms of settlement. Accordingly on 24-3-2003 the workman appeared in person and Adv. Shri P. J. Kamat appeared on behalf of the employer. Both the parties submitted that the dispute between them is amicably settled and they filed the terms of settlement dated 24-3-2003 at Exb. 13. The parties prayed that award be passed in terms of the said settlement. I have gone through the terms of the settlement dated 24-3-2003 Exb. 13 which are duly signed by the parties and I am satisfied that the said terms are certainly in the interest of the workman. I therefore accept the submission made by the parties and pass the consent award in terms of the settlement dated 24-3-2003 Exb. 13.

ORDER

1. It is agreed between the parties that the workman whose service has been terminated and who is party to the Ref. No. IT/72/99 is properly relieved from the services with effect from 03-10-1999.
2. It is agreed between the parties that the workman shall be paid an amount of Rs. 35,000/- (Rupees Thirty Five Thousand only) in full and final settlement of all his legal dues such as Gratuity, leave encashment, bonus, ex-gratia etc. etc.

3. It is agreed between the parties that in view of clauses (1) and (2) above, the workman does not press his demand for reinstatement in service with back wages and other consequential benefits.
4. That the amount payable under clause (2) above has been paid to the workman by way of A/C Payee Cheque.
5. It is agreed and declared that the amount paid by the Party II to the workman/Party I in the manner hereinabove provided for is in full and final settlement and satisfaction of all his claims against the party II including claim for compensation for loss of office or otherwise whatsoever.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2003-LAB/1243

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 27-3-2003 in reference No. IT/66/2002, is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 7th May, 2003.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/66/2002

Workman Shri Ashwin Tombat,
Rep. by The General Secretary,
The Goa Union of Journalists,
Sharamshakti Bhavan, 6th floor,
Patto Plaza,
P.O. Box 331 Paanji-Goa. ... Workman/Party I

V/s

M/s. Gomantak Private Limited,
Panaji-Goa. ... Employer/Party II

Workman/Party I - Absent.

Employer/Party II - Absent.

Dated: 27-3-2003.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 16-10-2002 bearing No. 28/54/2002-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s. Gomantak Private Limited, in terminating the services of Shri Ashwin Tombat, with effect from 19-03-2001, is legal and justified ?

It not, to what relief the workman is entitled to ?"

2. On receipt of the reference a case was registered under No. IT/66/2002 and registered A/D notice was issued to the parties requiring them to appear before this Tribunal on 26-11-2002 at 10.30 a.m. The Employer-Party II (for short, "Employer") was duly served with the said notice but none appeared on behalf of the employer on the said date and thereafter. The registered A/D notice issued to the Workman-Party I (for short, "Union") was returned unserved with remark, "Unclaimed, return to sender". Therefore the case was adjourned and fixed on 18-12-2002 at 10.30 a.m. and another notice Under Certificate of Posting was issued to the union. However, on this date also none appeared on behalf of the union and therefore it was taken as no statement of claim was filed on behalf of the union. Since the union as well as the employer had not participated in the proceedings the case was fixed for award. Before the award was passed this Tribunal received a letter from the union dated 16-1-2003 requesting that a fresh date may be fixed and the union may be informed of the said date. Since the case was already fixed for passing the final award and from the letter of the union it could be seen that the union was aware of the pending of the present case before this Tribunal, a registered A/D notice dated 24th Jan., 2003 was sent to the union informing that the case was already fixed for passing the award as the union had remained absent inspite of the notice sent under certificate of posting which was duly served on them. By the said notice the union was asked to approach the office of this Tribunal on any working day and take inspection of the file so as to take necessary steps in the matter. The said registered A/D notice was returned unserved with remarks, "Unclaimed". The above conduct of the union clearly shows that the union is not interested in pursuing with the matter. The union was given opportunity to appear before this Tribunal and to represent their case and the union was very well aware of the present proceedings pending before this Tribunal. Inspite of being aware the union did not participate in the proceedings and even did not claim the notice which was sent to them after the receipt of their letter dated 16-1-2002.

3. The reference of the dispute was made by the Government at the instance of the Union since they challenged the action of the employer of terminating the services of the workman Shri Ashwin Tombat w.e.f.

19-03-2001. It is the union who had raised the industrial dispute. The Bombay High Court, Panaji Bench, in the case of V.N.S. Engg. Services v/s Industrial Tribunal, Goa, Daman and Diu and another, reported in FJR Vol. 71 at page 393 has held that the obligation to lead the evidence to establish an allegation made by a party is on the party making an allegation, the test being that he who does not lead evidence must fail. The Bombay High Court has further held that the provision of Rule 10-B of the Industrial Disputes Act which requires the party raising a dispute to file a statement of demands relating to the issues in the order of reference for adjudication within 15 days from the receipt of the order of reference and forward copies to the opposite party involved, clearly indicates that the party who raises the industrial dispute is bound to prove contention raised by him and Industrial Tribunal or Labour Court would be erring in placing the burden of proof on the other party to the dispute. In another case i.e. in the case of V. K. Raj Industries v/s Labour Court (I) and others reported in 1981 (29) FLR 194, the Allahabad High Court has held that the proceedings before the Industrial Court are judicial in nature even though the Indian Evidence Act is not applicable to the proceedings before the Industrial Court, but the principles underlying the said Act are applicable. The High Court has further held that it is well settled that if a party challenges the validity of an order, the burden lies on him to prove the illegality of the order and if no evidence is produced the party invoking the jurisdiction must fail. The High Court has also held that if the workman fails to appear or to file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the workman and he will not be entitled to any relief.

4. In the present case the dispute was raised by the union as regards termination of services of the workman by the employer which according to them is illegal and unjustified and since it was at their instance that the reference of the dispute was made by the Government, the burden was on the union to prove that the action of the employer in terminating the services of the workman was illegal and unjustified. The union was given sufficient opportunity to appear before this Tribunal and file their statement of claim but they did not appear and consequently no statement of claim was filed on behalf of the workman. There is no material before me to hold that the action of the employer in terminating the services of the workman is illegal and unjustified. I, therefore, hold that the union has failed to prove that the action of the employer in terminating the service of the workman w.e.f. 19-03-2001 is not legal and justified. The reference has to be answered against the workman holding his termination from service as legal and justified, and I hold so accordingly.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the action of the management of M/s. Gomantak Private Limited, in terminating the

services of Shri Ashwin Tombat, with effect from 19-03-2001 is legal and justified. I further hold that Shri Ashwin Tombat, is not entitled to any relief.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2003-LAB/1246

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 26-3-2003 in reference No. IT/5/2002, is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 7th May, 2003.

IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. Case No. IT/5/2002

Mrs. Betty Fernandes,
Sequeira,
Biomhhatt, Pedda,
Benaulim-Goa.

... Workman/Party I

V/s

M/s. Information
Technologies (India) Ltd.,
L-44, STP-II
Industrial Estate,
Verna-Goa.

... Employer/Party II

Workman/Party-I Present in person.

Employer/Party-II Represented by Adv. Shri M. S. Bandodkar.

Dated: 26-3-2003.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 23-1-2002 bearing No. 28/11/2001-LAB referred the following dispute for adjudication by this Tribunal.

1. Whether Mrs. Betty Fernandes Sequeira, Data Entry Operator could be construed as "workman" as defined in the Industrial Disputes Act, 1947 (Central Act 14 of 1947).
2. If the answer to (1) above is in affirmative, then whether the action of the management of M/s. Information Technologies (India) Ltd., Verna, in terminating the services of their workperson Mrs. Betty Fernandes Sequeira, Data Entry Operator, with effect from 5-3-2001, is legal and justified.
3. If the answer to (2) above is in negative, then to what relief the workperson is entitled.

2. On receipt of the reference a case was registered under No. IT/2/2002 and registered A/D notice was issued to the parties. In pursuance to the said notice the workman/Party-I (for short, "workman") appeared in person. The registered A/D notice issued to the employer/Party-II on the address given was returned unserved with the postal remark "closed". The workman filed an application furnishing fresh address of the employer and accordingly a registered A/D notice was sent to the employer on the said fresh address. The workman filed claim statement on 25-4-2002. As on that date the A/D card in respect of the registered A/D notice issued to the employer was not received and therefore it could not be known whether the employer was served with the notice or not. The workman thereafter filed another application giving the fresh address of the employer and accordingly another registered A/D notice was issued to the employer. The said registered A/D notice was returned unserved with postal remark "Co. closed". The workman was thereafter directed to take steps to serve the employer and accordingly the workman prayed that the employer be served by substituted service. The employer was thereafter served by substituted service by pasting the notice dated 7-8-2002 on the wall of the premises of the employer.

3. The facts of the case in brief as pleaded by the workman are that she was employed with the employer/Party-II (for short "employer") at Verna Industrial Estate, Verna Salcete Goa and she was working as a Data Entry Operator from 19-4-99 and she was confirmed in service by letter dated 15-11-99. That when as usual she reported for work on 5-3-2001 she was told not to enter the office and not to sign the attendance register. That when she demanded the explanation in writing, the employer refused to give the same and orally refused employment to her from 5-3-2001. The workman contended that the termination of her services is illegal and unjustified. The workman stated that the employer also failed to settle her final settlement benefits. The workman therefore claimed that she is entitled to reinstatement in service with full back wages.

4. After the claim statement was filed by the workman the case was fixed for filing written statement by the

employer. The Registered A/D notice which was issued to the employer was returned unserved with postal remark "Company closed". At the request of the workman the employer was served by substituted service. Since the employer remained absent on 26-8-2002 the case was proceeded ex-parte and the case was fixed for evidence of the workman. Thereafter Adv. Shri Bandodkar appeared on behalf of the employer and submitted that the parties are trying to arrive at a settlement and therefore at the request of the parties the case was fixed for filing the terms of settlement on 5-12-2002. Accordingly on the said date the workman appeared in person and Adv. Shri Bandodkar appeared on behalf of the employer. They submitted that the dispute between the parties was amicably settled and they filed the terms of settlement dated 5-12-2002 at Exb. 4. Parties prayed that consent award be passed in terms of the settlement. I have gone through the terms of the settlement which are duly signed by both the parties and I am satisfied that the said terms are certainly in the interest of the workman. I, therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 5-12-2002.

ORDER

1. It is agreed between the parties that the Management of Information Technology Limited shall pay a sum of Rs. 15,000/- (Rupees fifteen thousand only) by way of demand draft dated 15-11-2002, drawn on the Bank of Maharashtra bearing number '433386' to Mrs. Betty Fernandes in full and final settlement of all her claims arising out of her employment and claims arising out of the reference mentioned hereinabove.
2. Mrs. Betty Fernandes shall accept the said amount of Rs. 15,000/- mentioned in clause "1" above, in full and final settlement of all her claims arising out of her employment with the Company and reference mentioned hereinabove and further confirms that nothing further is due and payable to her from the Company which case can be computed in terms of money, and this settlement is satisfy all her claims of reference including her any claim of reinstatement and/or re-employment.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2003-LAB/1241

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 21-3-2003 in reference No. IT/15/93, is hereby published as required by Section

17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 7th May, 2003.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/15/93

Shri Michael Fernandes,
Rep. by Goa Trade & Commercial
Workers Union,
Velhos Building, 2nd floor,
Panaji-Goa.

... Workman/Party I

V/s

M/s. Cia Commercial,
Anglo Americana,
Rua de Ourem,
Panaji-Goa.

... Employer/Party II

Workman/Party I - Represented by Adv. Shri Suhas Naik.

Employer/Party II - Represented by Adv. Shri Rohit Lobo.

Dated: 21-3-2003.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 21-12-1992 bearing No. 28/53/92-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s. Cia Commercial, Anglo Americana, Panaji-Goa, in terminating the services of Shri Michael Fernandes, Driver-cum-Salesman, with effect from 21-6-91 is legal and justified ?

If not, to what relief the workman is entitled ?"

2. On receipt of the reference a case was registered under No. IT/15/93 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The workman-Party I (for short, "workman") filed the statement of claim at Exb. 4. The facts of the case in brief as pleaded by the workman are that M/s. Cosme Matias Menezes is a group of Companies having many sister concerns one of them being Employer/Party II M/s. Cia Commercial, Anglo Americana. That he was appointed by M/s. Cosme Matias Menezes as a driver cum salesman w.e.f. 23-7-79 and was

posted at Margao depot. That his services were confirmed from 1-6-80 and as per the terms of the amendment letter he was liable to be transferred to any of the establishment of M/s. Cosme Matias Menezes including the employer-Party II. That by letter dated 25-1-84 his services were transferred to the employer-Party II (for short "employer") and he was informed that his salary stood revised w.e.f. 17-7-83 in line with the revision of M/s. Cosme Matias Menezes sales in which he was placed. That the workman was further informed that his arrears would be paid in due course of time and that all the other service conditions remained the same. That on 13-6-90 the workman was issued a show cause notice by one Shri K. D'Souza of M/s. Cosme Matias Menezes alleging that there was some irregularity and unaccountability of some consumer products and by reply dated 14-6-90 the workman denied the allegations made against him. That inspite of the explanation given the employer issued a charge sheet dated 27-6-90 to the workman stating that the explanation given by him was found unsatisfactory. That in the charge sheet the workman was charged for theft, fraud and for acts subversive of discipline and good behaviour. That thereafter a domestic enquiry was conducted. That by letter dated 20-3-91 the employer informed the workman that they had gone through the findings of the Inquiry Officer wherein it was held that the charges levelled against him were proved and that they concurred with the said findings and further that taking into consideration the gravity of the misconduct and the past records of the workman they had decided to discharge the workman from service. That by letter dated 6-4-91 the workman informed the employer that since charges were not proved against him no action can be taken against him and the workman also reiterated that he had not committed theft, fraud or dishonesty as alleged. That the workman also submitted that the Inquiry Officer had acted in a bias manner and his findings were perverse. That the workman also submitted that his past service records were clean and if his services are terminated grave injustice and irreparable loss would be caused to him and his family members. That by letter dated 21-6-91 the employer informed the workman that there was no substance in his letter dated 6-4-91 and that they had decided to terminate his services on account of loss of trust and also on the ground that he was found guilty of the charges levelled against him. That on receipt of the said letter the workman wrote a letter to the employer requesting to withdraw the termination order and reinstate him with full back wages and continuity in service and since the employer did not exceed to the request the workman raised an industrial dispute and the conciliation proceedings held ended in a failure. The workman contended that the enquiry proceedings conducted against him was defective and invalid as the charges levelled against him were not according to the service rules/certified standing orders or model standing orders. The workman also contended that the charges were not proved in the enquiry and the findings of the enquiry officer are perverse and biased. The workman

contended that the termination of his services is illegal and unjustified and hence he is entitled to be reinstated in service with full back wages and continuity in service.

3. The employer filed the written statement at Exb. 5. The employer admitted that the workman was employed with them as driver cum salesman. The employer stated that on 11-6-90 it was reported that the workman had inappropriate two tins of LIF of one kg each and one packet of Cerelac Wheat for which no invoice was raised and that further on 12-6-90 it was again reported that the workman had inappropriate one packet of Cerelac, one packet of Noodles and two packets of Taster Choice of 250 gms for which invoices were not raised. The employer stated that a show cause notice was issued to the workman asking for his explanation and since the explanation given by him was not found satisfactory a charge sheet was issued to him charging him of theft, fraud or dishonesty in connection with the employer's business or property and committing acts subversive of discipline and good behaviour and that subsequently an enquiry was conducted in which he was given full opportunity to defend himself. The employer stated that the Inquiry Officer, gave findings holding that the charges were proved against the workman and on receipt of the findings a show cause notice was issued to the workman as to why action should not be taken against him and on receipt of his explanation, considering the grave and serious charges which were found to be proved against him, he was discharged from service w.e.f. 21-6-91 by paying him one month's wages in lieu of notice. The employer state that the they were fully justified in discharging the workman from service. The employer denied that the enquiry was held against the workman not in a fair and proper manner or that the findings of the Inquiry Officer are perverse. The employer prayed that in case the enquiry is set aside they should be allowed to lead additional evidence before this Tribunal to prove charges against the workman. The employer denied that the workman is entitled to reinstatement in service with full back wages and continuity in service or to any other relief. The employer contended that the termination of service of the workman is legal and justified. The workman thereafter filed rejoinder at Exb. 6.

4. On the pleadings of the parties following issues were framed at Exb. 7.

1. Whether Party I proves that the charges framed against him were not in accordance with the service rules/certified standing orders/model standing orders and hence the enquiry held against him is a nullify and invalid ?
2. Whether the charges of misconduct levelled against Party I are proved to the satisfaction of the Tribunal by acceptable evidence ?
3. Whether Party I proves that the termination of his services by Party II w.e.f. 21-6-91 is illegal and unjustified ?

4. Whether Party I is entitled to any relief ?

5. What Award ?

5. The issue Nos. 1 and 2 were treated as preliminary issues because the issue No. 1 pertained to the fairness of inquiry conducted against the workman and the issue No. 2 pertained to the misconduct alleged to have been committed by the workman. The employer was represented by Adv. Shri M. S. Bandodkar. After the issues were framed the case was fixed for evidence of the parties on preliminary issue Nos. 1 and 2. On 16-2-99 Adv. Shri Bandodkar, representing the employer submitted that he had given notice to the employer informing them of his desire to withdraw his appearance from the case. He produced the copy of the notice dated 8th February, 1999 given by him to the employer alongwith the application dated 16-2-99 praying that he may be permitted to withdraw his appearance from the case. The copy of the notice showed that it was hand delivered to the employer and the endorsement on the said notice showed that it was received by the Personal Manager of the employer. In the said notice Adv. Shri Bandodkar had informed the employer that the case was fixed on 16-2-99 and that he was going to withdraw his appearance on that date. Since proper notice was given by Adv. Shri Bandodkar to the employer the application filed by him was allowed and he was permitted to withdraw his appearance from the case on behalf of the employer. On 16-2-99 none was present on behalf of the employer and therefore the case was ordered to proceed ex-parte against the employer. Thereafter ex-parte evidence of the workman was recorded on the preliminary issues and by my findings dated 4-2-2000 it was held by me that the enquiry conducted against the workman is not fair, proper and valid. The issue No. 1 was therefore answered in the affirmative and the enquiry was set aside. Since it was held that the enquiry conducted against the workman is not fair and proper and as such the enquiry was set aside, the question of deciding whether the misconduct is proved against the workman or not did not arise. The issue No. 2 was therefore answered accordingly. Thus the issue Nos. 1 and 2 stood disposed off.

6. After the enquiry was set aside, even though the case was proceeded ex-parte the employer still an opportunity was given to the employer to lead evidence before this Tribunal to prove the charges of misconduct against the workman as his services were terminated on the ground that he had committed acts of misconduct mentioned in the charge sheet dated 27-6-90. However, none appeared on behalf of the employer and therefore the employer's evidence on merits of the case was closed on 9-3-2000. Thereafter the workman led evidence by examining himself and based on the evidence on record this Tribunal passed an award dated 10-6-2002 holding that the action of the employer in terminating the services of the workman w.e.f. 21-6-91 is illegal and unjustified. The workman was ordered to be reinstated in service with full back wages and consequential benefits and continuity in service.

7. After the award was passed the employer filed an application dated 29-8-2002 praying that the findings on preliminary issue Nos. 1 and 2 and the ex-parte award dated 10-6-2002 be set aside. The said application was registered as Misc. application 5/2002. The notice of the said application was given to the workman. He filed reply to the said application at Exb. 3 opposing the said application. The employer thereafter filed rejoinder at Exb. 5. The parties thereafter submitted that the matter between them is likely to be settled. Accordingly at the request of the parties the matter was fixed for settlement. Accordingly on 4-2-03 the parties appeared along with their respective Advocates. Adv. Shri Suhas Naik, representing the workman submitted that he has no objection to allow the application filed by the employer for setting aside the findings on preliminary issues and the ex-parte award and he made an endorsement to that effect on the application. In view of the no objection given by Adv. Shri Suhas Naik, order dated 4-2-2003 was passed setting aside the findings given by this Tribunal on the preliminary issue Nos. 1 and 2 and also setting aside the ex-parte award dated 10-6-2002. Thereafter the parties submitted that the dispute between them is amicable settled and they filed the terms of settlement dated 4-2-2003 at Exb. 15. The parties prayed that consent award be passed in terms of the said settlement. I have gone through the said settlement which is duly signed by the parties along with their respective advocates. I am satisfied with the terms of the settlement which certainly are in the interest of the workman. I therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 4-2-2003 Exb. 15.

ORDER

1. It is agreed between the parties that, the Party II, M/s. Cia Commercial Anglo Americana, Rua de Ourem, Panaji, Goa, shall pay, and the Party I Shri Michael Fernandes shall accept, an amount of Rs. 3,50,000/- (Rupees three lakhs and fifty thousand only) in full and final settlement of all his claims including that of V.R.S. Compensation, Bank Wages and other legal dues connected with Reference No. IT/15/1993.
2. It is agreed between the parties that on payment of the above said amount by the Party II to Party I, Shri Michael Fernandes, shall have no other claims of whatsoever nature, including that of reinstatement against M/s. Cia Commercial Anglo Americana, Rua de Ourem, Panaji, Goa, in respect of Reference No. IT/15/1993. Further, that all his claims against the Party II whether by way of financial liability or otherwise, stand fully and conclusively settled.
3. It is agreed between the parties that no deductions, including TDS shall be made by the Party II from the above amount payable to the Party I Shri Michael Fernandes, and further, that the Party I shall discharge a valid receipt for the said amount received by him.

4. It is agreed between the parties that the Party I shall deal with the Income Tax Authorities, with regard to the amount received by him under this Settlement. Further, that in the event of any dispute arising with the Income Tax Authorities about the payment of Income Tax, if any, by the Party I with regard to the amount received under this Settlement, the same shall be dealt with directly by Shri Michael Fernandes.
5. It is agreed between the parties that the Party I, Shri Michael Fernandes shall not arise any other claims against M/s. Cia Commercial Anglo Americana, Rua de Ourem, Panaji, Goa, and that the Party I stands validly discharged from his employment with the Party II.
6. It is agreed between the parties that the Party II shall pay the above amount to the Party I, and the Party I shall discharge valid receipts immediately upon signing, and filing of the present consent terms.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2003-LAB/1242

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 26-3-2003 in reference No. IT/17/94, is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 7th May, 2003.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/17/94

Workmen rep. by the
General Secretary,
Gomantak Mazdoor Sangh,
Kamakshi Krupa, Ground Floor,

Khadapa Band,
Ponda-Goa.

... Workman/Party I

V/s

M/s. Precision Casting
and Fabricating Co.,
D2-6, Mapusa Industrial Estate,
Mapusa Goa.

... Employer/Party II

Workmen/Party I - Represented by Shri P. Gaonkar.

Employer/Party II - Represented by Adv. Shri E. Dias.

Dated: 26-3-2003.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 24-8-1993 bearing No. 28/35/93-LAB referred the following dispute for adjudication by this Tribunal.

Whether the action of the management of M/s. Precision Casting & Fabricating Co., Mapusa Industrial Estate, in terminating the services of the following twelve workmen with effect from 16-11-92, is legal and justified?

1. Francis D'Silva
2. Devidas Thankkar
3. John D'Cunha
4. Luizinha Fernandes
5. Mathew D'Silva
6. Mathew Fernandes
7. Ulhas Gaonkar
8. Lourdes Correia
9. Shrikant Gaonkar
10. Rozario Fernandes
11. Johnas D'Souza
12. Agnelo D'Silva

If not, to what relief the workman is entitled?

2. On receipt of the reference a case was registered under No. IT/17/94 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The workman-Party I (for short, "Union") filed its statement of claim at Exb. 3. The facts of the case in brief as pleaded by the Union are that it is a registered union under the Trade Unions Act, 1926 and workers employed with the Party II (for short, employer) are its members. That the employer employed the workmen mentioned in the order of the reference and they have worked with the employer for more than one year continuously without any break. That the workers joined the union in the month of July, 92 and after their joining the union submitted charter of demand to the employer. That on receipt of the demands the employer started harassing the workers. That since the employer did not initiate any discussions on the Charter of Demand, the union raised dispute before the

conciliation officer, Panaji. That during the pendency of the conciliation proceedings the employer terminated the services of the workmen without obtaining permission from the Conciliation Officer. The Union contended that the termination of the services of the workmen is by way of victimisation because they have joined the union and their termination is illegal and unjustified and it is in contravention of the provisions of the Industrial Disputes Act, 1947. The Union claimed that the workmen are entitled to reinstatement in service with full back wages and continuity of service.

3. The employer filed written statement at Exb. 4. The employer stated that it was a proprietary establishment of one Mr. Frederic Vaz and at all times till its closure he used to carry on the business as designer and manufacturer of bakery equipments and tools such as ovens, ham and bacon slices as his own products or on job-work basis, pursuant to the orders placed in this behalf by the customers. The employer denied that the union is a registered union or the workmen are its members or that the employer is an industry under the Industrial Disputes Act, 1947. The employer denied that the workmen worked continuously without any break. The employer denied that the workers were harassed or any of the Committee members were laid off as a part of harassment. The employer stated that the Charter of Demand submitted by the Union was opposed because the demands of the Union would have cast excessive monetary burden on the employer. The employer stated that after opposing the demands the union instigated the workers who started indulging in all sorts of acts of indiscipline, disorderly behaviour etc. The employer stated that the union instigated the workmen to resort to strike w.e.f. 16-11-92 in order to coerce the employer to give up his rights and to abrogate his managerial functions in breach/disregard of long established and accepted practices, conventions and procedures. The employer stated that due to the acts obstruction of normal work and threats given it was not conducive for the working of the establishment in a peaceful, normal and profitable manner and therefore the employer was left with no other alternative but to come to conclusion that his establishment is liable to be closed and accordingly the establishment was closed w.e.f. 16-11-92. The employer stated that pursuant to the closure the services of all the workmen were terminated w.e.f. 16-11-92 on payment of notice pay, compensation and other legal dues. The employer denied that any permission was required to be obtained from Conciliation Officer before terminating the services of the workmen. The employer denied that the services of the workmen were terminated by way of victimisation for joining the union. The employer denied that the workmen are entitled to any relief as claimed by them. The Union thereafter filed rejoinder at Exb. 5.

4. On the pleadings of the parties issues were framed at Exb. 6 and thereafter the case fixed for recording the evidence of the parties. During the pendency of the proceedings the parties submitted that the dispute between them was amicably settled and they filed the

terms of settlement dated 31-1-03 at Exb. 22. The parties prayed that award be passed in terms of the said settlement. I have gone through the terms of the settlement which are duly signed by the parties and I am satisfied that the said terms are certainly in the interest of the workmen. I therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 31-1-03 Exb.22.

ORDER

1. It is agreed by and between the parties that the workmen mentioned in the Annexure "A" shall be paid their dues including the ex-gratia payment as mentioned in the said Annexure "A".
2. It is agreed by and between the parties that having paid the amount mentioned in Annexure "A" through cheques and DD the workmen admits and acknowledges the receipt thereof.
3. In view of the above both the parties agreed that they have no claim of whatsoever nature in this dispute.
4. Both the parties agreed to file this settlement for the consent award.

ANNEXURE "A"

Sr. No.	Name of Employee	DOJ	Wages	Amount
1.	Devidas Thakkar	9-2-84	571	19,998
2.	Mathew Fernandes	10-10-86	671	19,998
3.	Mathew D'Silva	20-5-85	590	17,999
4.	Ulhas Gaonkar	1-7-88	571	13,999
5.	Shrikant Gaonkar	14-2-91	645	13,499
6.	Rosario Fernandes	8-4-91	593	11,999
7.	Johnas D'Souza	16-10-91	593	10,999
8.	Agnelo D'Silva	1-5-89	571	12,498
	Total			1,20,989/-

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2003-LAB/1299

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 14-4-2003 in reference No. IT/55/95, is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour):

Panaji, 13th May, 2003.

IN THE INDUSTRIAL TRIBUNAL**GOVERNMENT OF GOA****AT PANAJI**

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/55/95

Shri Antonio S. R. D'Silva,
H. No. 322, 4th Ward,
Colva Salcete-Goa.

... Party I

V/s

M/s. Expo Machinery Limited,
By its Successor,
M/s. Whirlpool India Ltd.,
Vasant Laxmi Smruti Building,
Behind Raikar Nursing Home,
Tonca, Caranzalem-Goa.

... Party II

Party I - In person.

Party II - Represented by Shri M. S. Bandodkar.

Dated: 14-4-2003.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 16-10-1995 bearing No. 28/45/95-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the transfer of Shri Antonio S. N. D'Silva Accounts Assistant, by management of M/s. Expo Machinery Limited, Panaji Goa, to Gaziabad with effect from 24-11-94 amounts to refusal of employment as alleged by the workman himself ?

If yes, to what relief the workman is entitled ?"

2. On receipt of the reference a case was registered under No. IT/55/95 and registered A/D notice was issued to the parties wherein the parties put in their appearance. The Workman/Party I (for short, "Workman") filed his statement of claim at Exb. 3. The facts of the case in brief as pleaded by the workman are that he was employed with the Employer/Party II - M/s. Expo Machinery Limited, (for short, "employer") w.e.f. 19th February, 1992 at its Goa Branch as per the appointment letter dated 14-4-92. That the terms of the appointment were forced upon him because the appointment letter was issued to him two months after his appointment and as such he was not aware of the terms and conditions of his employment at the time of his appointment. That he was subjected to harrasment and mental torture by the management including physical assault by the Sales Executive Mr. Gautam Kamat which was reported to the management by him by letter dated 5-3-93. Then the management called the

workman to Bombay on 18-4-94 and there the Managers Mr. Ashok Bhagnari, Mr. Savio D'Souza and Mr. Dilip Garge threatened him to give resignation stating that if he did not resign his services will be terminated and his name and photo will be published in the leading news papers of Goa. That on 15-11-94 he was issued a letter of transfer and promotion and Mr. Dilip Garge, the Bombay Branch Accountant started coercing him to write on the said letter as, "accepted". That the workman informed Mr. Garge that he would not write as accepted. That thereafter the said letter was sent to him through Blue Dart Express Courier Service and he also received a letter dated 12-11-94 through courier service contending that the refusal of transfer was made by him on 15-11-94, which letter was fabricated by the management and this act on the part of the management amounts to unfair labour practice. The workman contended that the offer of transfer is illegal because it was given without giving notice as required under Sec. 9(A) of the Industrial Disputes Act, 1947. That the said offer of transfer and promotion is fabricated, illegal, bad in law and malafided and therefore he refused to accept the same and he tried to explain the facts of refusal by letter dated 15-11-94. That on 16-11-94 when he reported for duties he found that his drawer was sealed and he was made to sit idle and thus he was wrongly restrained from doing his duties. That on 17-11-94 the management broke open the drawers of his working table which were sealed and removed all the files and documents which were in his possession and also removed his cash Rs. 4509.80 p. and his personal file. That on 24-11-94 when he reported for duty he was physically pushed and removed from the office premises by the Branch Manager Mr. Savio D'Souza and was not allowed to enter the office premises which according to the workman amounted to refusal of employment//termination of service without written communication. The workman claimed that he is entitled to reinstatement in service with full back wages or in the alternative is entitled to compensation of Rs. 7,50,000/-.

3. The employer filed written statement at Exb. 4. The employer stated that the reference is not maintainable because there is no industrial dispute and also because the Goa Trade & Commercial Workers Union has no locus standi or legal right to raise the dispute on behalf of the workman. The employer admitted that the workman was employed vide appointment letter dated 14-4-92 at his Goa branch at Panaji but denied that the appointment letter was issued more than two years after the appointment of the workman or that the workman was not aware of the terms and conditions of his service at the time of his employment as on 19-2-92. The employer denied that the workman was subjected to harrasment and torture by the management including physical assault on him by Mr. Gautam Kamat. The employer however admitted that there was some incident between the workman and Mr. Kamat and stated that it is the personal problem of the workman and Mr. Kamat and the employer cannot be blamed for the same. The employer denied that Shri Ashok Bhagnari, Shri Savio D'Souza and Shri Dilip Garge threatened the workman

that if he did not resign from his service he will be terminated and his name and photo will be published in the news papers in Goa. The employer admitted that on 15-11-94 a letter of transfer and promotion dated 12-11-94 was offered to the workman along with the letter dated 27-10-94 and stated that the workman refused to accept the said letter and as such it was sent by courier service. The employer denied that the workman was being coerced to write on the said letter as, "accepted" as alleged by the workman. The employer denied that any notice u/s 9(A) of the Industrial Disputes Act, 1947 was required to be given to the workman and as such the transfer order is not illegal for not giving notice u/s 9(A) of the Act. The employer denied that on 16-11-94 when the workman reported for duty he found the drawers of his table sealed and that he was made to sit idle. The employer stated that the workman was relieved on 15-11-94 for reporting at Gaziabad on 24-11-94 and therefore there was no question of allowing him to work in Goa. The employer denied that the workman was wrongly restrained from doing his duties or that on 17-11-94 the drawers of his table were broke open and possession of all the files and documents were taken by the employer. The employer stated that the workman personally opened the drawers of his table and handed over all the files and property of the employer to Mr. Lad. The employer denied that order of transfer was malafided or it was by way of unfair labour practice. The employer denied that on 24-11-94 the workman reported for duty and that he was physically pushed and removed from office premises by the Manager Mr. Savio D'Souza and was not allowed to enter the office premises. The employer stated that the workman was required to report at Gaziabad from 23-11-94 and therefore the question of refusal of employer to him or terminating his services did not arise. The employer denied that the treatment meted out to the workman amounted to refusal of employment or termination of service without written communication. The employer denied that the workman is entitled to reinstatement in service or in the alternative is entitled to compensation of Rs. 7,50,000/-.

4. On the pleadings of the parties, issues were framed at Exb. 6.

1. Whether the Party I proves that the transfer order dated 15-11-94 issued by the Party II is in violation of provisions of Sec. 9A of the Industrial Disputes Act, 1947 and hence illegal ?
2. Whether the Party I proves that the transfer order is illegal, malafide and an act of unfair labour practice on the part of the Party II under Sec. 25T and Sec. 2(ra) of the I. D. Act, 1947 and hence illegal ?
3. Whether the Party I proves that the Branch Manager Mr. Savio D'Souza removed the Party I from the office premises on 24-11-94 which amounts to termination of service without communication and hence the dispute is covered under Sec. 2A of the I.D. Act, 1947 ?

4. Whether the Party I proves that his transfer to Gaziabad w.e.f. 24-11-94 amounts to refusal of employment ?
5. Whether the Party II proves that there is no industrial dispute existing or apprehended as contemplated under Sec. 2(K) or 2(A) of the I.D. Act, 1947 and hence the reference is not maintainable ?
6. Whether the Party II proves that the Goa Trade and Commercial Workers Union has no locus standi and/or legal right to raise the demand on behalf of the Party I and hence the reference is not maintainable ?
7. Whether the Party I is entitled to any relief ?
8. What Award ?

5. After the issues were framed the case was fixed for the evidence of the workman. After the examination in chief of the workman was partly recorded the workman filed an application dated 9th January, 1997 at Exb. 11 objecting to the appearance of Mr. M. S. Bandodkar on behalf of the employer. After the parties were heard this Tribunal passed an order dated 23rd July, 1997 holding that Mr. M. S. Bandodkar being the office bearer of the employer's association namely the Jt. Secretary, is competent to represent the employer in the present reference and consequently the application filed by the workman objecting to Mr. Bandodkar's appearance was dismissed. The workman filed Writ Petition No. 316/97 before the Hon'ble High Court of Bombay at Goa against the said order of this Tribunal but the same was dismissed by the Hon'ble High Court by order dated 14th November, 1997. The workman thereafter filed another application dated 1st March, 2001 at Exb. 25 for transferring the dispute in the name of M/s. Whirlpool India Ltd., for declaring the appearance of Mr. Bandodkar as invalid, null and void and for initiating criminal proceedings against Mr. Bandodkar. After hearing the parties this Tribunal passed an order dated 17-7-2001 ordering to bring on record M/s. Whirlpool India Ltd., as a successor to M/s. Expo Machinery Limited. By the same order this Tribunal did not permit Mr. Bandodkar to represent M/s. Whirlpool India Ltd., on the basis of the letter of authority dated 31-10-96 and also rejected the prayer of the workman for initiating criminal prosecution against Mr. Bandodkar. Thereafter Mr. Bandodkar filed an application dated 25-9-2001 stating that he has been authorised by Goa Employer's Association to represent M/s. Whirlpool India Ltd., he being the Jt. Secretary of the Association and he produced the letter of authority issued in his favour by the Association. The workman thereafter filed an application dated 25-9-2001 at Exb. 31 praying that Mr. Bandodkar should not be permitted to assist or interfere or file any application on behalf of M/s. Whirlpool India Ltd. Before the arguments on the said application were heard the workman filed an application dated 18-12-2001 at Exb. 36 stating that the list of the members of the Employer's Association filed by the employer is not in existence and that he wants examine/cross

examine Mr. Narayan Naik and Mr. Avinash Borkar, members of the Association. Since the workman had stated that he had objections for Mr. Bandodkar making any submission on behalf of the employer, this Tribunal after hearing the parties by order dated 6-2-2002 permitted Mr. Bandodkar to make submissions on behalf of the employer. After the passing of the above order the workman stopped appearing before this Tribunal. Thereafter this Tribunal passed an order dated 11-6-2002 dismissing the application dated 18-2-2001 Exb. 36 filed by the workman wherein he had sought permission to examine and cross examine Mr. Narayan and Mr. Avinash and this Tribunal further held that the Employer's Association is in existence. Subsequently this Tribunal passed an order dated 25th July, 2002 dismissing the application dated 25-9-2001 Exb. 31 filed by the workman objecting to the representation of the employer by Mr. Bandodkar and Mr. Gautam Kamat. By the said order Mr. Bandodkar and Mr. G. Kamat were permitted to represent the employer in the present reference.

6. After passing the order dated 25th July, 2001 permitting Mr. Bandodkar and Mr. G. Kamat to represent the employer, the case was fixed for continuation of examination in chief of the workman, since after recording the examination in chief of the workman partly on 31-10-96 his further deposition was not recorded as thereafter several interim applications were filed by the workman. As mentioned earlier, the workman appeared before this Tribunal only till the date of the passing of the order dated 6-2-2002 and thereafter did not appear. The case was fixed on 7-8-2002 at 10.30 a.m. for recording further examination in chief of the workman. However, the workman remained absent on the date and therefore his evidence was closed. Thereafter the case was fixed on 2-9-2002 at 10.30 a.m. for recording the evidence of the employer. The employer examined its Sales Executive Shri Gautam Kamat and then closed its evidence.

5. My findings on the issues are as follows:

- Issue No. 1 : In the negative.
- Issue No. 2 : In the negative.
- Issue No. 3 : In the negative.
- Issue No. 4 : In the negative.
- Issue No. 5 : In the negative.
- Issue No. 6 : In the negative.
- Issue No. 7 : In the negative.
- Issue No. 8 : As per order below.

REASONS

8. Issue Nos. 5 and 6: These issues are taken up first because they go to the very root of the matter namely the maintainability of the reference. The employer had taken the defence in the written statement that the reference is not maintainable because there is no industrial dispute existing or apprehended as contemplated under Sec. 2(k) or 2A of the Industrial Disputes Act, 1947 and because the Goa Trade and Commercial Worker's Union has no locus standi and/or legal right to raise the demand on behalf of the workman. Since it is the employer who had raised the above

defence the burden was on the employer to prove the above two issues. Shri M. S. Bandodkar, representing the employer submitted in the course of his arguments that the employer is not pressing for the above issues. Since the employer has not pressed for the above issues, I hold that the employer has failed to prove that the reference made by the Government is not maintainable. I therefore answer the issue Nos. 5 and 6 in the negative.

9. *Issue Nos. 1, 2 and 3:* The workman had raised the contention that the transfer order dated 15-11-94 issued to him by the employer is illegal because it was issued in violation of the provisions of Sec. 9A of the Industrial Disputes Act 1947, as no prior notice was given under the said section. The workman had further contended that the transfer order is illegal, malafide and ID an act of unfair labour practice under Sec. 25T and 2(ra) of the Industrial Disputes Act, 1947. He had also contended that he was removed from the office premises on 24-11-94 by the Branch Manager Mr. Savio D'Souza which according to him amounted to termination of his service without communication. Based on the above pleadings made by the workman, the above issues were framed casting the burden on him to prove the said issues. The workman was given opportunity to lead evidence. He examined himself but his examination in chief was partly recorded. The workman was given opportunity to complete his examination in chief and thereby lead his evidence. But he remained absent, and hence there was no alternative but to close his evidence on 7-8-2002. Infact the workman stopped attending this Tribunal after passing of the order dated 6-2-2002. Since the deposition of the workman has remained incomplete and he has not offered himself to cross examination, his entire deposition which is on record is liable to be discarded. In other words, in the present case in view of the facts stated above there is absolutely no evidence from the workman. The workman has failed to discharge the burden cast on him. In the circumstances I hold that the workman has failed to prove that the transfer order is illegal, malafide or is an act of unfair labour practice. I also hold that the workman has failed to prove that on 24-11-94 he was removed from the office premises by the Branch Manager Mr. Savio D'Souza thereby amounting to termination of his service without written communication. I therefore answer the issue Nos. 1, 2 and 3 in the negative.

10. *Issue No. 4:* The dispute which has been referred by the Government to this Tribunal for adjudication is whether the transfer of the workman to Gaziabad with effect from 24-11-94 amounts to refusal of employment to the workman. The burden was cast on the workman to prove that his transfer to Gaziabad amounted to refusal of employment because the dispute was raised by him and his contention was that the transfer amounted to refusal of employment. As mentioned earlier the workman did not complete his deposition and he was not subjected to cross examination. Therefore his entire deposition is liable to be discarded. Since the workman did not participate in the proceedings after 6-2-2002, his evidence was closed on 7-8-2002. Thus there

is no evidence from the workman in the present case. The employer has examined its Sr. Executive Mr. Gautam Kamat. He has admitted the appointment order of the workman dated 14th April, 1992 produced at Exb. W-1. He has stated that the workman was promoted as accountant by letter dated 27-10-94 and in the same letter he was informed that his services were transferred from Goa branch to Gaziabad branch and he was asked to report at the said branch by 15-11-94. The said letter has been produced by him at Exb.E-1. He stated that the workman was transferred to Gaziabad branch because of the exigencies of business at that branch. He stated that the workman did not report for duties at Gaziabad. He stated that the transfer of the workman was not by way of harrasment or victimisation. He denied that the workman was refusal employment.

11. The deposition of the employer's witness Mr. Gautam Kamat has gone unchallenged as the workman did not participate in the proceedings and consequently Mr. Kamat was not cross examined. Shri M. S. Bandodkar, representing the employer submitted that the employer has a right to transfer his employee at any place and the employee is bound to report at the place of transfer unless it is shown that the transfer is malafide. He submitted that in the present case the terms of the appointment of the workman provided for transfer of the workman in any of the branches of the employer. He submitted that transfer does not amount to refusal of employment. He relied upon the judgment of the Jharkhand High Court in the case of M/s. Usha Martin Industries Ltd., v/s The Presiding Officer, Labour Court, Jamshedpur, reported in 2002 LLR 305, and the judgment of the Delhi High Court in the case of Inder Dev Yadav v/s National Thermal Power Corporation Ltd., reported in 2002 LLR 361. I have gone through both the judgments. In the case of M/s. Usha Martin Industries Ltd., (supra) the Jharkhand High Court has held that it is a settled law that in the absence of any contrary provisions, the employer has inherent power to exercise discretion relating to condition of service, including transfer, if it is not detrimental to the employee. The High Court held that the transfer being a condition of service, the management has power to transfer if it does not contravene any rule/guideline or affects any right of the workman. The Delhi High Court in the case of National Thermal Power Corporation Ltd., (supra) has held that it is not for the employee to decide the place where he wants to work and choose the time he wants to join. The appointment letter of the workman dated 14th April, 1992 is on record as Exb. W-1. Clause 8 of the said appointment letter mentions that the services of the workman may be utilised in any of the offices or branches of the company or in any department of the company or in any of the Associated Companies as may be required from time to time. This appointment letter that was accepted by the workman. The workman was aware that he was liable to be transferred at any of the branches of the employer. The transfer order dated 27-10-94 has been produced by the employer at Exb. E-1. The said order is in fact a promotion and transfer order. As per the said order the workman was promoted

as Accountant and his services were transferred from Goa Branch to Gaziabad branch and he was asked to report at Gaziabad branch by 15-11-94. This transfer order was not in contravention of any rule or guide line nor in anyway it affected the right of the workman. On the contrary the workman was promoted and transferred. The transfer order was in accordance with the terms of the appointment letter of the workman.

12. It is an admitted position that by transfer letter the workman was asked to report for duty at Gaziabad on or before 15-11-94, and the workman did not report at the said place of transfer. The Supreme Court in the case of Gujrat Electricity Board and another v/s Atmaram Sungomal Poshani reported in 1989 (2) SCC 602 has held that no Government servant or employee of public undertaking has legal right of being posted at any particular place and that whenever a public servant is transferred he must comply with the order, but if there be any difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order and if the transfer order is not stayed, modified or cancelled the concerned public servant must carryout the order of transfer and he has no justification to avoid or evade the transfer order merely on the ground of having made a representation or of his difficulty in moving from one place to another. In my view these principles would equally apply to the employees other than Government servants or employees of public undertaking. The Supreme Court in the case of Syndicate Bank Ltd. V/s The Workmen reported in AIR 1966 SCC 1283 has held that it is the right of the employee to decide the necessity of transfer, but the transfer should not be mala fide or for punishing the employee for his trade union activities and that the Tribunal should not reach the findings of mala fide capriciously or on flimsy grounds but only if there is sufficient and proper evidence in support of the finding. The Supreme Court in the case of Hindustan Lever Ltd., v/s The Workmen reported in AIR 1974 SC 17 has held that if the order of transfer is prima facie valid, the burden of proving that it is invalid lies on the workman.

13. In the present case the appointment letter of the workman dated 14th April, 1992 Exb. W-1 provided for the transfer of the workman in any of the branches of the company. The workman had accepted the said appointment letter and hence was aware that he was liable to be transferred at any of the branches of the employer. The workman has not produced any evidence to show that his transfer to Gaziabad branch was mala fide or by way of harassment and victimisation or is an act of unfair labour practice. No evidence has been produced by the workman to show that the transfer order is invalid or that it was in contravention of the guide line or any rule or in any way it affected his right. In any event, as per the law laid down by the Supreme Court in the case of Gujrat Electricity Board (supra) the workman ought to have complied with the order of transfer by reporting for duty at Gaziabad branch by 15-11-94, if the workman wanted he could have made a

representation to the competent authority for stay or modification cancellation of the said transfer order. There is no evidence in this case any such representation against the transfer order was made by the workman. Therefore the workman was bound to report for duties at Gaziabad branch. However instead of reporting there the workman continued to remain in Goa even after 15-11-94. Since the workman was validly transferred to Gaziabad branch there was no question of allowing him to report for duties at Goa branch after 15-11-94. The workman had to join duties at the place of his transfer, that is, at Gaziabad.

14. In the light of what is discussed above there is no substance in the contention of the workman that his transfer to Gaziabad amounts to refusal of employment to him. There is no evidence on record to show that employment was refused to the workman. On the contrary it is the workman who refused to obey the transfer order issued to him by not reporting for duties at Gaziabad branch where he was transferred. I therefore hold that the workman has failed to prove that his transfer to Gaziabad with effect from 24-11-94 amounts to refusal of employment. I, therefore answer the issue No. 4 in the negative.

15. Issue No. 7: It has been held by me that the transfer of the workman from Goa branch to Gaziabad branch is valid. It has been also held by me that the transfer of the workman at Gaziabad branch does not amount to refusal of employment. This being the case the question of granting any relief to the workman does not arise. I therefore hold that the workman is not entitled to any relief and hence I answer the issue in the negative.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the transfer of the workman Shri Anonio S. N. D'Silva, Accounts Assistant, by the management of M/s. Expo Machinery Limited, Panaji-Goa, to Gaziabad with effect from 24-11-94 does not amount to refusal of employment. It is hereby further held that the workman Shri Antonio S. N. D'Silva is not entitled to any relief.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/7/2001-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 16-5-2003 in reference No. IT/9/2001 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 23rd June, 2003.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. case No. IT/9/2001

Smt. Sumati M. Naik,
Rep. by the President,
Goa Trade & Commercial
Workers' Union,
Velho's Bldg., 2nd floor,
Panaji-Goa.

... Workman/Party I

V/s

M/s. Francis Albuquerque,
Managing Director,
M/s. Alfa Tiles,
Near Dempo House,
Campal, Panaji-Goa.

... Employer/Party II

Workman/Party I - Represented by Adv. Shri Suhas Naik.

Employer/Party II - Represented by Adv. Shri A. Nigalye.

Dated: 16-5-2003.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 5-1-2001 bearing No. IRM/CON/(51)/1998/133 referred the following dispute for adjudication by this Tribunal.

1. Whether the action of the management of M/s. Alfa Tiles, Panaji Goa, in refusing employment to Smt. Sumati M. Naik, Helper with effect from 5-8-1998, is legal and justified?

2. If not, to what relief the workperson is entitled?

2. On receipt of the reference a case was registered under No. IT/9/2001 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties appeared The Workman/Party-I (for short, "workman") filed her statement of claim at Exb. 3. The facts of the case in brief as pleaded by the workman are that she was employed with the employer/Party-II (for short, "employer") in February, 1987 at the factory of the employer situated at Corlim Industrial Estate, Corlim, Ilhas Goa. That she was working continuously with the employer as a Helper till she was refused employment from 5-8-1998 without justified reasons. That after refusal of employment by letter dated 6-8-98 she requested the Managing Director to reinstated her back in service but no attention was paid to the said request by the employer and therefore she contacted the union and

requested the union to raise dispute on her behalf. Accordingly the Secretary of the union raised the dispute by letter dated 7-8-98 before the Dy. Labour Commissioner, Panaji in respect of illegal refusal of employment to her by the employer and requested for reinstatement in service with full back wages. That the notices were sent by the Dy. Labour Commissioner to the Managing Director of the employer asking him to remain present for the conciliation proceedings but the management remained adamant and did not attend the conciliation proceedings. That since no settlement could be arrived at failure was recorded by the Dy. Labour Commissioner on 22-8-2000. After refusing employment to the workman the employer recruited new workers in place of the workman and as such the refusal of employment is illegal and unjustified. The workman contended that refusal of employment to him is in contravention of Section 25-F of the Industrial Disputes Act, 1947 and that no opportunity was given to her of being heard before illegal refusal of employment. The workman contended that she was not issued any warning letter, memo, show cause notice or chargesheet prior to refusal of employment nor any enquiry was conducted against her. The workman therefore contended that refusal of employment to her by the employer from 5-8-98 is illegal and unjustified and hence she is entitled to reinstatement in service with full back wages.

3. The employer filed written statement at Exb. 5. By way of preliminary objections the employer stated that the reference is not maintainable in law and on facts and the matter referred for adjudications is not an industrial dispute within the meaning of Section 2(k) of the Industrial Disputes Act, 1947. The employer stated that its establishment is closed w.e.f. 1-1-1999 and the closure is final and irrevocable and as such the relief sought by the workman are not available to her. The employer denied that its workers or the workman are the members of Goa Trade and Commercial Workers Union and as such the said union has no authority to represent and espouse the case of the workman. The employer denied that the workman worked continuously without break since her appointment in the establishment of the employer. The employer denied that the employment was refused to the workman on 5-8-98 without assigning any justified reasons. The employer stated that its partner received a letter dated 6-8-98 from the union on behalf of the workman which was addressed to non-existent Managing Director of the employer. The employer stated that the contents of the said letter are false and baseless and the employer is not aware of the letter dated 7-8-98 raising the dispute. The employer however admitted that a letter was received from the Dy. Labour Commissioner and accordingly its representatives attended the meeting fixed by him. The employer denied that the settlement was not arrived at due to adamant stand of the employer. The employer denied that new workers were recruited in place of the workman. The employer denied that the workman is entitled to any relief as claimed by her. The workman thereafter filed rejoinder at Exb. 6.

4. On the pleadings of the parties issues were framed at Exb. 7 and thereafter the case was fixed for the evidence of the workman. Accordingly the deposition of the workman was recorded and the case was fixed for cross examination of the workman. At this stage the parties submitted that they are trying to arrive at an amicable settlement. Accordingly at the request of the parties the case was fixed on 5-5-2003 for filing the terms of the settlement. On this date the parties appeared and they submitted that the dispute between them is amicably settled. They filed the consent terms dated 5-5-2003 along with the application dated 5-5-2003 and prayed for consent award in terms of the said consent terms. I have gone through the consent terms which are duly signed by the parties and their respective Advocates. I am satisfied that the consent terms are certainly in the interest of the workman. I therefore accept the consent terms filed by the parties and pass the consent award in terms of the said consent terms.

ORDER

1. It is agreed by and between the parties that the Party II has paid to Party I a sum of Rs. 15,000/- (Rupees fifteen thousand only) in full and final settlement of her claim in Reference No. IT/9/2001 pending in this Hon'ble Industrial Tribunal Government of Goa, Panaji.
2. The aforesaid sum of Rs. 15,000/- (Rupees fifteen thousand only) is paid by the Party II to Party I by bearer cheque bearing No. 015770 dated 2-5-2003 drawn on Panaji branch of Goan Peoples Urban Co-operative Bank Ltd., the receipt where of Party I hereby acknowledges.
3. Party I hereby agrees and declares that her dispute with the Party II is hereby conclusively settled and she has no claim or demand of whatsoever nature against Party I and its partners.
4. The parties agree to file these consent terms in the Hon'ble Industrial Tribunal, Government of Goa in Reference No. IT/9/2001 with a request to pass a consent award in terms thereof.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/7/2001-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 16-5-2003 in reference

No. IT/77/2002 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 23rd June, 2003.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. Case No. IT/77/2002

Workman rep. by
General Secretary,
Goa Tourism Development
Corp. Ltd., Employees Union,
Tourist Hostel,
G.E.D.C. Ltd.,
Panaji-Goa. ... Workman/Party I

V/s

M/s. Goa Tourism Development
Corp. Ltd.,
Trionora Apartment,
Panaji-Goa. ... Employer/Party II

Workman/Party-I - Absent.

Employer/Party-II - Represented by Adv. Shri P. J. Kamat.

Dated: 16-5-2003.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 the Government of Goa by order dated 22-11-2002 bearing No. 28/55/2002-LAB referred the following dispute for adjudication by this Tribunal.

1. Whether the action of M/s. Goa Tourism Development Corporation Ltd., in transferring Shri Dayanand Simepurushkar, Room Attendant, from Tourist Resort Calangute to Tourist Hostel, Old Goa, with effect from 18-9-2001, is legal and justified?

2. If not, to what relief the workman is entitled to?

2. On receipt of the reference a case was registered under No. IT/77/2002 and registered A/D notice was

issued to the parties requiring them to appear before this Tribunal on 16-1-2003 at 10.30 a.m. In pursuance to the said notice Adv. Shri P. J. Kamat appeared on behalf of the employer/Party-II (for short, "employer"). However none appeared on behalf of the workman/Party-I (for short, "Union") and since the A/D card in respect of the notice issued to the union was not received it was not known whether the union was duly served with the notice or not. Therefore another registered A/D notice was issued to the union dated 5-3-2003 requiring the union to appear before this Tribunal on 26-3-2003 at 10.30 a.m. and file the claim. The union was duly served with the notice but none appeared on behalf of the union on 26-3-2003 at 10.30 a.m. and therefore one more opportunity was given to the union to appear before this Tribunal on 9-4-2003 at 10.30 a.m. However on this date also none appeared on behalf of the union and only Adv. Shri P. J. Kamat appeared on behalf of the employer. Since the Presiding Officer of the Tribunal was on leave on the said date the case was adjourned to 24-4-2003 for appearance of the union and for filing claim statement on its behalf. However on this date also none appeared on behalf of the union and consequently claim statement was not filed on the union. Adv. Shri P. J. Kamat representing the employer submitted that since the union has not filed any claim statement, the employer also does not want to file any statement on its behalf. He submitted that since the union has failed to appear and file the claim statement the reference cannot be answered in favour of the union.

3. The reference of the dispute was made by the Government at the request of the union as the union challenged the action of the employer in transferring the workman Shri Dayanand Simepurushkar, Room Attendant from Tourist Resort Calangute to Tourist Hostel, Old Goa w.e.f. 18-9-2001. It is a settled law that the party who challenges the illegality of the order or the action taken by the employer, the burden lies on that party to prove the illegality of the said order or the action. The Allahabad High Court in the case of V. K. Raj Industries V/s. Labour Court and others reported in 1981 (29) FLR 194 has held that the proceedings before the Industrial Court are judicial in nature even though the Indian Evidence Act is not applicable to the proceedings before the Industrial Court but the principles underlying the said Act are applicable. The High Court has held that it is a well settled law that if a party challenges the validity of an order the burden lies upon him to prove the illegality of the order and if no evidence is produced the party invoking the jurisdiction must fail. The High Court has further held that if the workman fails to appear or to file written statement or to produce evidence the dispute referred by the Government cannot be answered in favour of the workman and he would not be entitled to any relief. The Bombay High Court, Panaji Bench in the case of V.N.S. Engineering Services V/s. Industrial Tribunal, Goa, Daman and Diu and another reported in F.J.R. Vol. 71 pg. 393 has held that the obligation to lead evidence to establish an allegation is on the party making an allegation the test being that he who does not lead evidence must fail. The Bombay High Court

further held that the provisions of Rule 10B of the Industrial Disputes (Central) Rules, 1957 clearly indicates that the party who raises an Industrial Dispute is bound to prove the contentions raised by him and the Industrial Tribunal or the Labour Court would be erring in placing the burden of proof on the other party to the dispute.

4. In the present case the dispute was raised by the union that the employer illegally and without justification transferred the workman Shri Dayanand Simepurushkar from Tourist Resort Calangute to Tourist Hostel, Old Goa w.e.f. 18-9-2001 and the reference was made by the Government at the instance of the union. Therefore applying law laid down by the Bombay High Court and the Allahabad High Court in the above referred case, the burden of proof was on the union to prove that the action of the employer in transferring Shri Dayanand Simepurushkar to Tourist Hostel at Old Goa from 18-9-2001 is not legal and justified. However in spite of the opportunity given the union did not appear and consequently no statement of claim was filed on its behalf. From the conduct of the union it is clear that the union is not interested in pursuing further with the matter. There is no material before me to hold that the action of the employer in transferring Shri Dayanand Simepurushkar from Tourist Resort Calangute to Tourist Hostel, Old Goa from 18-9-2001 is not legal justified. In the absence of any evidence the reference cannot be answered in favour of the union. In the circumstances I hold that the union has failed to prove that the action of the employer in transferring Shri Dayanand Simepurushkar from Tourist Resort Calangute to Tourist Hostel, Old Goa w.e.f. 18-9-2001 is illegal and unjustified. Therefore it has to be held that the above action of the employer is legal and justified.

Hence I pass the following order.

ORDER

It is hereby held that the action of M/s. Goa Tourism Development Corporation Ltd. in transferring Shri Dayanand Simepurushkar, Room Attendant from Tourist Resort Calangute to Tourist Hostel, Old Goa w.e.f. 18-9-2001 is legal and justified I hereby further held that the workman is not entitled to any relief.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/7/2001-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 3-7-2003 in reference

No. IT/32/2002 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.
V. R. Ghaisas, Under Secretary (Labour).
Panaji, 17th July, 2003.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. Case No. IT/32/2002

Shri Romaldo D'Souza,
H. No. E-47, Khobrawado,
Goa.

... Workman/Party I

V/s

M/s. Dona Terezinha,
Alfran Group of Hotels,
Gaurawado, Calangute,
Bardez-Goa.

... Employer/Party II

Workman/Party-I - Represented by Adv. Shri Suhas Naik.

Employer/Party-II - Represented by Adv. Shri V. Menezes.

Dated: 3-7-2003.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 26-4-2002 bearing No. 28/2/2001-LAB referred the following dispute for adjudication by this Tribunal.

- (1) Whether Shri Romaldo D'Souza, can be construed as 'workman' as per Section 2(s) of the Industrial disputes Act, 1947, (Central Act 14 of 1947) ?
- (2) If the answer to (1) above is in the affirmative, then, whether the action of the Management of M/s. Dona Terezina Alfran Group of Hotels, Gaurawado, Calangute Bardez Goa, in terminating the services of Shri Romaldo D'Souza with effect from 30-4-2001, is legal and justified ?
2. If the answer to (2) above is in the negative, then, to what relief the workman is entitled ?

2. On receipt of the reference a case was registered under No. IT/32/2002 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The workman/Party-I (for short, "workman") filed his statement of claim at Exb.4 in support of his contention that he is a workman

as defined under Section 2(s) of the Industrial Disputes Act, 1947 and that the action of the employer/Party-II (for short, "employer") in terminating his services w.e.f. 30-4-2001 is illegal and unjustified. The workman claimed that he is entitled to reinstatement in service with full back wages. The employer filed written statement at Exb.5 denying the contention raised by the workman in the written statement. The Party-II stated that the workman is not a workman as per Section 2 (s) of the Industrial Disputes Act, 1947 as he falls in the management category and he was drawing salary of Rs. 7100/- p.m. The employer denied that the services of the workman were terminated illegally. The employer stated that the workman was gainfully employed with Paradise Village Beach Resort, Calangute. The employer denied that the workman is entitled to any relief as claimed by him. The workman thereafter filed rejoinder at Exb.6.

3. On the pleading of the parties issues were framed at Exb.6 and thereafter the case was fixed for recording the evidence of the workman. However before the evidence was recorded the parties along with their Advocates appeared on 30-6-2003 and submitted that the dispute between the parties was amicably settled. The workman filed an application dated 30-6-2003 stating that the employer has agreed to pay him Rs. 99,761/- in full and final settlement of all his claims and the said amount has been disbursed to him by cheque as mentioned in the said application. The workman stated that since his claim has been settled the dispute between him and the employer does not exist and he prayed that no dispute award be passed. Along with the said application the parties filed an application dated 30-6-2003 signed by the workman and the employer along with the respective advocates. In the said application the employer admitted that the settlement has been arrived at with the workman as mentioned by the workman in his application dated 30-6-2003. Both the parties prayed that in view of the settlement the dispute does not exist and that they do not wish to pursue the reference any further. The parties therefore prayed that no dispute award be passed in the present reference.

4. Since accordingly to the workman and the employer the dispute in the present reference has been settled, the dispute does not exist and consequently the reference does not survive. In the circumstances I pass the following order.

ORDER

It is hereby held that the reference does not survive as the dispute between the parties does not exist.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.